

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH FRANCIS REEDER, JR.,)
)
 Plaintiff,)
)
 v.) Civ. No. 99-328-SLR
)
SGT. R. REYNOLDS and C/O E.L.)
HOWELL,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 9th day of March, 2004, having reviewed plaintiff's motion for the award of attorney's fees and costs and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 158) is granted in part and denied in part, to the extent and for the reasons that follow:

1. In the case at bar, the jury found that the named defendants applied force to plaintiff maliciously and sadistically for the very purpose of causing harm, and did so willfully, deliberately, maliciously, or with reckless disregard of plaintiff's constitutional rights. Despite its verdict for plaintiff on all issues, however, the jury did not award damages. No other relief was requested at the time of the verdict or otherwise awarded by the court.

2. Plaintiff argues in his motion that he is entitled to the award of attorney's fees and costs as he is the prevailing party in this litigation. Such an award is specifically contemplated under 42 U.S.C. § 1997e(d), which provides that attorney's fees may be awarded in any action brought by a prisoner where the fee was "directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under" 42 U.S.C. § 1988. 42 U.S.C. 1997e(d) (1) (A). In Texas State Teachers Ass'n v. Garland Independent School Dist., 489 U.S. 782 (1989), the Supreme Court held that, "to be considered a prevailing party within the meaning of § 1988, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." Id. at 792. In Farrar v. Hobby, 506 U.S. 103 (1992), the Court further explained that a plaintiff "must obtain [either] an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement, [and] [w]hatever relief the plaintiff secures must directly benefit him at the time of the judgment or settlement. . . . Only under these circumstances can civil rights litigation affect 'the material alteration of the legal relationship of the parties' and thereby transform the plaintiff into a prevailing party." Id. at 111.

3. Consistent with the Supreme Court's decision in Farrar, § 1997e(d)(1)(B) provides that "the amount of the fee [must be] proportionately related to the court ordered relief for the violation" or the fee must be "directly and reasonably incurred in enforcing the relief ordered for the violation." 42 U.S.C. § 1997e(d)(1)(B)(i) and (ii).

4. The court concludes that plaintiff is not entitled to attorney's fees under the standards discussed above, as no relief of any kind was ordered in connection with the favorable verdict. However, it is in the interests of justice to award plaintiff the costs, if any, associated with the litigation, in light of the jury's verdict and its dramatic condemnation of defendants' conduct.¹ See Fed. R. Civ. P. 54(d)(1).

THEREFORE, IT IS FURTHER ORDERED that, on or before **March 30, 2004**, plaintiff shall submit an affidavit regarding his litigation-related disbursements. On or before **April 20, 2004**, defendants shall either pay the costs or submit a paper in opposition to the amount requested. The court will not entertain any further argument on the merits.

Sue L. Robinson
United States District Court

¹Given the court's conclusion, the timing of plaintiff's motion for such fees and costs will not be addressed.